

wherein each of the plurality of child update service nodes is configured to operate as a parent update service node to another child update service node, and includes *an administration application programming interface (API) through which an administrator establishes a set of rules for distributing software updates from the update service node to its child update service nodes.*

With regard to these elements, particularly that update service nodes include an administration API, the Office Action points to Melchione at paragraphs [0020] and [0021]. However, applicants submit that Melchione fails to make an equivalent disclosure to that recited in the claim.

With regard to Melchione, paragraph [0020], this passage is directed entirely to describing that a software application may be executed (1) entirely on a local customer computer, (2) on the customer's computer and in conjunction with software on a remote computer, or (3) entirely on the remote computer. Irrespective of the location at which the software is executed, applicants submit that such disclosure fails to disclose "*an administration application programming interface (API) through which an administrator establishes a set of rules for distributing software updates from the update service node to its child update service nodes,*" as recited in Claim 1.

With regard to paragraph [0021], this passage of Melchione describes that administered software can be automatically provided to a customer computer "according to software administration directives set by a customer administrator." In other words, the software can be updated according to client directives at the client device. The Office Action apparently asserts (though it is not stated in this paragraph) that the software must include some type of user interface that enables the client to configure downloads to the client's computer, and elevates this interface to an administration API. However, in contrast to a computer with a configuration ability to update itself (i.e., the local client computer), Claim 1 recites an administration API "through which an administrator establishes a set of rules *for distributing software updates from*

the update service node to its child update service nodes." In other words, the administration API of Claim 1 operates on a parent update service node to configure the parent update service node for delivering software updates to child update service nodes. While Melchione may disclose the ability to configure software to update itself on a client computer, Melchione fails to disclose an API that enables an administrator to configure distribution **to other** child nodes.

Neither Melchione nor a combination of Melchione, Mayer, and Crudele fully appreciate the value in providing a separate administration API with each update service node. As mentioned above, Melchione specifically teaches that a customer administrator may set the administration directives for administered software on the customer's computer. Additionally, Melchione further teaches that directives related to different nodes in the system are stored in a single data center. See, Melchione, paragraph [0077]. Software contained on the nodes can periodically communicate with the data center and implement the configuration directives stored in the data center. *Id.* On the other hand, by providing a separate administration API with each update service node, unique configurations are capable at each intermediate level in the hierarchical update service structure, allowing for dynamic downstream servicing.

The Supreme Court, in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 U.S.P.Q.2d 1385, 1395-97 (2007), identified a number of rationales upon which the U.S.P.T.O. may support a conclusion of obviousness. See also, M.P.E.P. § 2143. As recited by the court, the key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. Moreover, the court noted that the analysis supporting a rejection under 35 U.S.C. § 103 should be made explicit.

In the present application, the Office Action has relied upon a rationale of combining prior art elements from various references to establish a basis for rejecting this claim. However, as illustrated above, the cited references fail to disclose the elements of Claim 1. Hence, the

analysis for rejecting Claim 1 under 35 U.S.C. § 103 was flawed. As the basis for rejecting Claim 1 under 35 U.S.C. § 103 was flawed, applicants submit that a proper *prima facie* case of obviousness was not made, and request that the 35 U.S.C. § 103 rejection be withdrawn and the claim allowed.

Claims 2-10

Claims 2-10 each depend from independent Claim 1. As Claim 1 is in condition for allowance, applicants submit that Claims 2-10 are also in condition for allowance, especially when read in combination with Claim 1. Accordingly, applicants request that the 35 U.S.C. § 103 rejections of Claims 2-10 be withdrawn and the claims allowed.

In addition to depending from independent Claim 1, Claims 2-10 recite additional elements that further distinguish them from the cited references, some of which are recited below.

Claim 4

Applicants respectfully traverse the rejection of Claim 4 as being obvious over Mayer in view of Melchione and in further view of Crudele. In particular, applicants submit that Mayer, Melchione, and Crudele fail to disclose each element of Claim 4. In particular, applicants submit that the cited references fail to disclose:

a reporting module for generating and sending update activity reports to the parent update service node.

Contrary to the assertion of the Office Action, applicants submit that Mayer fails to teach a plurality of child update service nodes comprising, "***a reporting module for generating and sending update activity reports to the parent update service node,***" as recited by Claim 4.

Indeed, the Office Action points to Mayer, ¶ [0085], as disclosing a reporting module. Applicants assert that Mayer makes no such disclosure.

An exemplary reporting module is described in the Applicants' specification at lines 10-14, which is reproduced here for the convenience of the Office;

The reporting module 208 generates update-related reports, such as which groups have or have not received a particular update, which client computers have or have not downloaded/installed an update, what updates are available on the update service node, and the like. These reports may be used internally, such as by an administrator, and also submitted to the parent update service node.

In paragraph [0085] Mayer does little more than describe a method by which an agent can obtain a copy of a software program. Specifically, an agent is told it needs to install software on its system, the agent then checks whether the software needs to be installed, and if so, obtains a copy of the software by asking its parent in the hierarchy to get the software. Once the parent, or a node higher up, has the software, it will be recursively copied down, eventually ending up on the agent system.

As can be seen, the "update activity reports" of the present invention are not the functional equivalent of asking a parent node to provide a software program. Rather, the reports contain information on the status of the child update service node and make no requests from the parent node, as is the agents only function under Mayer. Further, while the agents in Mayer do communicate with parent nodes, the agents do not actually generate and send an update activity report to the parent nodes containing information on the status of the child update service nodes.

In view of the above, applicants submit that a proper *prima facie* case is not made in regard to Claim 4. Accordingly, applicants request that the 35 U.S.C. § 103 rejection be withdrawn and the claim allowed.

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206 682 8100

Claim 11

Claim 11 was rejected under a similar rationale as set forth regarding Claim 1. Indeed, Claim 11 recites similar elements to those found in independent Claim 1, including:

an update service node comprising: ... *an administration application programming interface (API) through which an administrator establishes a set of rules for distributing software updates to its child update service nodes.*

For the reasons set forth above in regard to Claim 1, applicants submit that Mayer, Melchione, and Crudele, alone and in combination, fail to disclose each and every element of Claim 11, contrary to the assertion of the Office Action. As the basis for the 35 U.S.C. § 103 rejection of Claim 11 is in error, applicants submit that a proper *prima facie* case of obviousness is not made. Accordingly, applicants request that the 35 U.S.C. § 103 rejection be withdrawn and the claim allowed.

Claims 12-17

Claims 12-17 each depend from independent Claim 11. As Claim 11 is in condition for allowance, applicants submit that Claims 12-17 are also in condition for allowance, especially when read in combination with Claim 11. Accordingly, applicants request that the 35 U.S.C. § 103 rejections of Claims 12-17 be withdrawn and the claims allowed.

Claim 30

While differing in scope from Claims 1 and 11, independent Claim 30 was rejected under a similar rationale as set forth regarding Claim 1. Indeed, Claim 30 recites similar elements to those found in independent Claims 1 and 11, and which are not found in the cited and applied references. In particular, Claim 30 recites:

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

wherein each of the plurality of child update service nodes includes an administration application programming interface (API) through which an administrator establishes a set of rules for distributing software updates from the update service node to its child update service nodes.

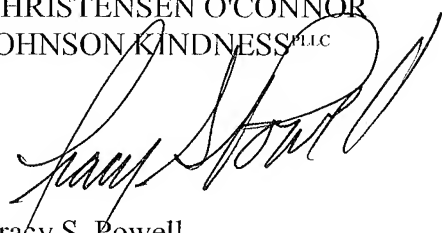
As indicated above, in spite of the assertion of the Office Action to the contrary, Melchione fails to disclose that each update service node is configured with "*an administration application programming interface (API) through which an administrator establishes a set of rules for distributing software updates from the update service node to its child update service nodes*," as recited in Claim 30. Accordingly, the articulated basis for rejecting Claim 30 was in error and a proper *prima facie* case of obviousness was not made. Applicants, therefore, request that the 35 U.S.C. § 103 rejection be withdrawn and the claim allowed.

CONCLUSION

In view of the foregoing remarks, applicants submit that the pending claims, Claims 1-17 and 30, are in condition for allowance. Reconsideration and allowance of the pending claims at an early date is solicited. If Patent Office personnel have any questions regarding this matter, they are invited to contact applicants' representative at the number below.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}



Tracy S. Powell
Registration No. 53,479
Direct Dial No. 206.695.1786

TSP:lal

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206 682 8100